

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

JUN 03 2020

Clerk, U.S. District Court
District Of Montana
Great Falls

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEVIN GERARD MITCHELL,

Defendant.

CR 07-12-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Kevin Gerard Mitchell (Mitchell) has been accused of violating the conditions of his supervised release. Mitchell admitted alleged violation 1. The government proved alleged violation 2. Mitchell's supervised release should be revoked. Mitchell should be placed in custody for 6 months, with 37 months of supervised release to follow. The District Court should entertain a motion to terminate Mitchell's supervised release if Mitchell successfully completes his sex offender treatment program.

II. Status

Mitchell pleaded guilty to Aggravated Sexual Abuse on March 14, 2007. (Doc. 18). The Court sentenced Mitchell to 151 months of custody, followed by

5 years of supervised release. (Doc. 26). Mitchell's current term of supervised release began on December 20, 2019. (Doc. 70 at 2).

Petition

The United States Probation Office filed a Petition on May 19, 2020, requesting that the Court revoke Mitchell's supervised release. (Doc. 70). The Petition alleges that Mitchell violated the conditions of his supervised release: 1) by using methamphetamine; and 2) by failing to successfully complete his sex offender treatment program. (Doc. 70 at 2).

Initial appearance

Mitchell appeared before the undersigned for his initial appearance on June 2, 2020. Mitchell was represented by counsel. Mitchell stated that he had read the petition and that he understood the allegations. Mitchell waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a revocation hearing on June 2, 2020. Mitchell admitted alleged violation 1. The government satisfied its burden of proof with respect to alleged violation 2. The violations are serious and warrant revocation of Mitchell's supervised release.

Mitchell's violations are Grade C violations. Mitchell's criminal history category is II. Mitchell's underlying offense is a Class A felony. Mitchell could be incarcerated for up to 60 months. Mitchell could be ordered to remain on supervised release for up to 43 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 4 to 10 months.

III. Analysis

Mitchell's supervised release should be revoked. Mitchell should be incarcerated for 6 months, with 37 months of supervised release to follow. This sentence is sufficient but not greater than necessary. The District Court should entertain a motion to terminate Mitchell's supervised release if Mitchell successfully completes his sex offender treatment program.

IV. Conclusion

The Court informed Mitchell that the above sentence would be recommended to United States District Judge Brian Morris. The Court also informed Mitchell of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Mitchell that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. Mitchell stated that he wished to waive his right to object to these Findings and

Recommendations, and that he wished to waive his right to allocute before Judge Morris.

The Court FINDS:

That Kevin Gerard Mitchell violated the conditions of his supervised release: by using methamphetamine; and by failing to successfully complete his sex offender treatment program.

The Court RECOMMENDS:

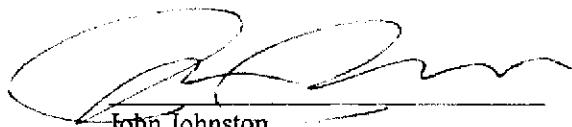
That the District Court revoke Mitchell's supervised release and commit Mitchell to the custody of the United States Bureau of Prisons for 6 months, with 37 months of supervised release to follow. The District Court should entertain a motion to terminate Mitchell's supervised release if Mitchell successfully completes his sex offender treatment program.

NOTICE OF RIGHT TO OBJECT TO FINDINGS AND RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the

right to appear and allocute before a district judge.

DATED this 3rd day of June, 2020.



John Johnston
United States Magistrate Judge